

**LAND & WATER CONSERVATION FUND PROGRAM  
STATE/LOCAL GRANT AGREEMENT 39-01463**

Through this Land & Water Conservation Fund Program State/Local Project Agreement (the "Agreement"), entered under the authority of Ohio Revised Code Section 1504.02 (A) (2), the State of Ohio, represented by the Ohio Department of Natural Resources ("ODNR"), and Mayfield Village (hereinafter referred to as the Subrecipient) agree to the planning, development, acquisition and/or construction of an outdoor recreation improvement project (the "Project") described as follows:

Project Title: Parkview Playground	FAIN No. P19AP00336
Amount of Federal Funds for Project: \$227,978	Federal Award Date: 9/23/2019
Total Amount of Award: \$455,956	Location of Project: Parkview Recreation Complex

Description of Project: Remove and replace playground.

**WHEREAS**, ODNR receives federal pass through funds under the terms and conditions of the Land & Water Conservation Fund ("LWCF"), a US Department of the Interior, National Park Service ("NPS") federal assistance program (Catalog of Federal Domestic Assistance #15.916), to assist state and local governments in the planning, development, acquisition and/or construction of public outdoor recreation areas and facilities; and

**WHEREAS**, ODNR and Subrecipient both have an inherent interest in the planning, development, acquisition and/or construction of the Project;

**NOW THEREFORE**, the parties, intending to be legally bound, covenant and agree as follows:

**DEFINITIONS:**

"Amount of Federal Funds for Project" means the amount ODNR reserves for the Subrecipient's Project as described in paragraph 6, PROJECT FUNDING.

"Total Amount of Award" means the approved cost estimate for the eligible work being completed by the Subrecipient, usually equal to 200 % of the Amount of Federal Funds for Project.

"Federal Award Date" means the federally authorized date on which the Project can begin.

**1. NOTICES:** All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) successfully sent by fax or email, and shall be respectively addressed as follows:

(a) with respect to ODNR:

Ohio Department of Natural Resources  
Office of Real Estate  
2045 Morse Road, E2  
Columbus, Ohio 43229  
Attn: Recreation Services Administrator

(b) with respect to Subrecipient:

Mayfield Village  
6622 Wilson Mills Rd.  
Mayfield Village, OH 44143  
Attn: Assistant Recreation Director  
DUNS No.: 095337903

Notices shall be deemed given upon receipt thereof and shall be sent to the addresses appearing above. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

**2. PERIOD OF PERFORMANCE.** For purposes of this Agreement the Project is deemed to have commenced on September 23, 2019 (federal award date). Subrecipient agrees to close out the Project on or before November 30, 2021 (the "Closeout Date"). The Project shall terminate on the Closeout Date unless the Project is closed out or terminated sooner as provided herein, in which event the Project shall terminate on the date of closeout or termination.

**3. PROPERTY; SUBSTITUTION.** Subrecipient agrees to operate, maintain and keep for public outdoor recreation purposes the property or facilities acquired or developed pursuant to this Agreement, as identified in Exhibit A, 'Boundary Map', attached hereto (the "Property"). The Property shall not be converted to other than public outdoor recreation use or transferred through deed or easement without the approval of ODNR and the Secretary of the U.S. Department of Interior. Such a conversion must be in accord with the then existing Ohio Statewide Comprehensive Outdoor Recreation Plan, and Subrecipient's provision of outdoor recreation property(ies) of at least equal fair market value and reasonably equivalent usefulness and location. Such properties must be approved by ODNR and NPS.

**4. TITLE TO PROPERTY.** Subrecipient hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Property, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Property as a public parks and recreation facility. Subrecipient represents that it is the fee simple owner of the Property, and that the only restrictions of record with respect to the Property are (a) any state of facts which an accurate survey might show, (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental authorities having jurisdiction over the Property and (c) all matters of record pertaining to the Property, including dedicated public rights-of-way and the items identified on said Exhibit A.

**5. SUBRECIPIENT'S OBLIGATIONS.** Subrecipient further agrees to (1) perform in compliance with the terms, promises, conditions, construction plans, specifications, estimates, procedures, maps, and assurances set forth in the Project Proposal; and shall secure compliance with all applicable federal, state and local laws and regulations; (2) promptly submit to the State of Ohio, such reports and documents as ODNR may request; (3) report any and all income gained on the Property or facilities during the course of the Project; (4) establish a separate special account for the funds for the acquisition and/or development of the Property; (5) prominently display a Land & Water Conservation Fund acknowledgment sign at the Property in accordance with the Land & Water Conservation Fund Procedural Guide (the "Procedural Guide"); and (6) immediately notify ODNR of any change or shift in the location(s) of services performed by Subrecipient or its Subrecipients under this Agreement. ODNR reserves the right to audit this special account created by Subrecipient, pursuant to this paragraph, either during or after completion of the Project

**6. PROJECT FUNDING.** ODNR hereby agrees to (1) reserve for the Subrecipient's Project, funding assistance not to exceed the total amount of the federal award (**\$227,978**) from the Land & Water Conservation Fund Local Assistance Grant Program; (2) upon receipt of tangible proof of actual eligible costs paid by Subrecipient in performing this Agreement, reimburse Subrecipient funds equal to no more than fifty percent of such eligible costs. Funds for the Project have been encumbered by Contract Encumbrance Record Number \_\_\_\_\_ and are so

certified by the State of Ohio Director of Budget and Management on \_\_\_\_\_ . The indirect rate on this federal award is 0%.

**7. COMPLIANCE WITH NPS AGREEMENT.** ODNR has entered into an agreement with NPS (the “NPS Agreement”), the result of which is the availability of federal funds for the Project. A copy of the NPS Agreement is attached hereto as Exhibit B. To the extent that they are relevant or applicable to Subrecipient’s acquisition and use of NPS funds and Subrecipient’s performance under this Agreement, the terms and conditions of the NPS Agreement are incorporated into this Agreement as though fully re-written herein.

**8. NON-APPROPRIATION AND OBM CERTIFICATION.** Performance by ODNR under this Agreement may be dependent upon the appropriation of funds by the Ohio General Assembly. Therefore, in accordance with Ohio Revised Code § 126.07, it is understood that ODNR’s funds are contingent on the availability of such lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments due hereunder, this Agreement is hereby terminated as of the date that the funding expires without further obligation of ODNR.

**9. COMPLIANCE WITH LWCF PROCEDURAL GUIDE.** Subrecipient shall observe and comply with the terms, conditions, and processes set forth in the LWCF Procedural Guide referred to in Section 5 of this Agreement. A full text copy of the Procedural Guide is hereby incorporated into this Agreement by reference the same as though fully re-written herein and is available for download at: <http://realestate.ohiodnr.gov/outdoor-recreation-facility-grants>. Failure to comply with, or show sufficient progress in complying with, the terms and conditions of the Procedural Guide may result in the termination of this Agreement. In the event of termination all unused funds shall be retained by NPS.

**10. PROPERTY USE.** The Property will be retained and used for public recreation purposes per Section 6(f)(3) of the LWCF Act. The Property and facilities on the Property will be kept open for general public use during reasonable hours and during appropriate seasons of the year, according to the type of use occurring on the site. Use of the Property and facilities on the Property will not be changed from that approved when Land & Water Conservation Fund assistance was obtained without prior written approval from ODNR. Any proposed construction of indoor recreation facilities on the Property must have prior written approval from ODNR and NPS.

**11. MAINTENANCE OF PROPERTY.** The Property will be operated and maintained so as to be safe, attractive, and inviting to the public. Sanitation and sanitary facilities will be maintained on the Property to comply with applicable state and local health standards. Buildings, recreation and support facilities, and other improvements on the Property will be kept in reasonable repair throughout their estimated life expectancy to prevent undue deterioration.

**12. ACCESSIBILITY.** Any new facility constructed on the Property will, whenever possible, be designed to accommodate people with disabilities. The Property and facilities on the Property shall be made available to all persons regardless of race, color, religion, sex, national origin, handicap, military status, age or ancestry. Any modifications to existing structures shall also include design considerations for persons with disabilities. It is understood that this requirement is applicable to any construction occurring on the Property, regardless of the funding source for the improvement. Subrecipient will require any facility on the Property to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), DOI Section 504 Regulations (43 CFR Park 17). Subrecipient will be responsible to ensure compliance with these specifications by the contractor.

**13. USER FEES.** User fees charged for use of the Property or facilities on the Property will be reasonable for all users and will not create unfair competition with private enterprises offering similar

services. Excess revenues from user fees for use of the Property or facilities on the Property will be returned to the public in the form of expanded facilities or services on the Property.

**14. UTILITIES.** All new or replacement utility lines on the Property will be placed underground.

**15. DISCRIMINATION PROHIBITED.** Discrimination on the basis of residence, including preferential fees, reservations, membership systems, is prohibited, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence. Compliance with federal, state, and local laws pertaining to non-discrimination in employment practices, facility and area use, minimum wages, conflict of interest, solicitations for contract bids, bid awards, etc., will be met at all times. No person will be discriminated against or be excluded from participating in any program or activity on the grounds of race, color, religion, sex, national origin, handicap, military status, age or ancestry.

**16. COMMENCEMENT OF PROJECT.** Subrecipient will cause work on the Project to be commenced within a reasonable time after receipt of notification that funds have been approved. Subrecipient shall prosecute completion of the Project with reasonable diligence.

**17. RELOCATION ASSISTANCE.** Subrecipient shall comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and Ohio Revised Code Chap. 163 for all real property acquisitions, and where applicable shall assure that these requirements have been complied with for the Property to be developed with assistance under the this Agreement.

**18. COMPLIANCE WITH FEDERAL LAW.** Subrecipient shall comply with all federal laws, rules, and regulations pertaining to grant management, including the pertinent provisions outlined in the subparts A through F of the 2 CFR Part 200, as adopted and supplemented by the USDA in 2 CFR Part 400.

**19. RELATIONSHIP OF THE PARTIES.**

**A. Expenses.** Subrecipient shall be responsible for all its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Subrecipient will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

**B. No Control Over Means and Methods.** While Subrecipient shall be required to perform its obligations described hereunder during the term of this Agreement, nothing herein shall be construed to imply, by reason of Subrecipient's obligations hereunder, that ODNR shall have or may exercise any right of control over Subrecipient with regard to the means or method of Subrecipient's performance of its obligations hereunder.

**C. No Right to Bind.** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

**D. Separate Entity.** It is fully understood and agreed that Subrecipient is a separate entity and neither Subrecipient nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the State of Ohio.

**20. LIABILITY OF SUBRECIPIENT.** The parties agree that Subrecipient shall be solely responsible for any and all claims, demands, or causes of action arising from Subrecipient's obligations under this Agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement. It is specifically understood and agreed that ODNR does not indemnify Subrecipient. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.

**21. COMPLIANCE WITH LAW.** Subrecipient shall comply with and shall monitor and implement any tasks or requirements relating to all existing, changes to, and new federal, state or local laws, ordinances, regulations, rules, decisions, orders or requirements that are applicable to Subrecipient's activities under this Agreement. Subrecipient agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder, including federal and state prevailing wage laws (Ohio Revised Code Chap. 4115, as well as Ohio Administrative Code Chap. 4101:9-4). Subrecipient and its employees are not employees of the State with regard to the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, and state revenue and tax laws.

**22. TAXES.** Subrecipient accepts full responsibility for payment of any and all taxes, insurance premiums, or payroll deductions required for all employees engaged by Subrecipient in the performance of the work authorized by this Agreement, including without limitation, unemployment compensation, workers' compensation, and all health care, income tax, social security, and Medicare deductions. The State is exempt from federal, state, and local taxes and shall not be liable for any taxes under this Agreement.

**23. SELF INSURANCE.** The State of Ohio is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollars per occurrence in accordance with Section 9.87 of the Ohio Revised Code.

**24. SUBRECIPIENT'S REPRESENTATIONS AND WARRANTIES**

**A. Compliance with Laws.** Subrecipient, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

**B. Drug-Free Workplace.** Subrecipient agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted contractors purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way while engaged in the Project.

**C. Nondiscrimination of Employment.** Pursuant to Ohio Revised Code § 125.111 and ODNR's policy, Subrecipient agrees that Subrecipient, any contractor, and any person acting on behalf of Subrecipient or a contractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status as defined in Ohio Revised Code § 4112.01, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work relating to the Project. Subrecipient further agrees that Subrecipient, any contractor, and any person acting on behalf of Subrecipient or a contractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work relating to the Project on

account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

**D. Affirmative Action Program.** Subrecipient represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to Ohio Revised Code § 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

**E. Conflicts of Interest.** No personnel of Subrecipient who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the work on the Project shall, prior to the completion of the Project, voluntarily acquire any personal interest, direct or indirect, that is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the Project. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to ODNR in writing. Thereafter, he or she shall not participate in any action affecting the Project, unless ODNR shall determine in its sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

**F. Ethics Compliance.** Subrecipient, by signature on this document, certifies that Subrecipient: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Subrecipient understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

**G. Legal Status.** Subrecipient affirms that it has been properly formed, and properly exists, as a political subdivision in the State of Ohio. Subrecipient further represents and warrants that it has legal authority to undertake all requirements of this Agreement.

**H. Campaign Contributions.** Subrecipient hereby certifies that neither Subrecipient nor any of Subrecipient's officers, nor the spouse of any such person, has made contributions to the governor or the governor's campaign committees in excess of the limitations specified in Ohio Revised Code § 3517.13.

**I. Findings for Recovery.** Subrecipient affirmatively represents and warrants to ODNR that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken appropriate remedial steps required under Ohio Revised Code §9.24 or otherwise qualifies under that section. Subrecipient agrees that if this representation or warranty is deemed to be false, the Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by ODNR hereunder immediately shall be repaid to ODNR, or an action for recovery immediately may be commenced by ODNR for recovery of said funds. Subrecipient warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code § 9.24.

**J. Debarment.** Pursuant to 2 CFR Part 180, Section 180.300 (c), Subrecipient represents and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any federal department or agency. Subrecipient affirms that if at any time

during the term of this Agreement Subrecipient is the subject of any reportable event as outlined in Section 872 of Public Law 110-417 (41 USC 2313), for any reason, becomes disqualified from conducting business in the State of Ohio, or becomes debarred from doing business with the State of Ohio, Subrecipient will immediately notify ODNR, in writing, and will immediately cease performance of the work. Failure to provide such notice in a timely fashion as required by NPS shall void this agreement and may be sufficient cause for ODNR to debar Subrecipient from future state contracting opportunities as may be permitted by law. Subrecipient represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either Ohio Revised Code §§ 153.02 or 125.25.

**K. Boycotting.** Pursuant to Ohio Revised Code §9.76, Subrecipient hereby declares that it is not boycotting any jurisdiction with whom the State of Ohio can participate in open trade, including the nation of Israel, and will not do so during the term of this Agreement.

**L. Offshore Goods and Services.** Subrecipient affirms to have read and understands the terms of Executive Order No. 2019-12D issued by Ohio Governor Mike Dewine and has signed and completed the Standard Affirmation and Disclosure Form and shall abide by those requirements in the performance of this Agreement and perform no services required under this Agreement outside of the United States. The Executive Order and Affirmation and Disclosure Form are available at the following website: <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>

## 25. BREACH; CURE; DAMAGES.

**A. Notice of Breach.** ODNR may, at any time after a breach, terminate this Agreement, upon written notice to Subrecipient. ODNR may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement.

**B. Opportunity to Cure.** ODNR, in its sole discretion, may permit Subrecipient to cure the breach. Such cure period shall be no longer than 21 calendar days. Notwithstanding ODNR permitting a period of time to cure the breach or Subrecipient's cure of the breach, ODNR does not waive any of its rights and remedies provided ODNR in this Agreement, including, but not limited to, recovery of funds paid for goods or services Subrecipient receives in violation of Executive Order No. 2019-12D, costs associated with corrective action, and liquidated damages.

**C. Liquidated Damages.** If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of Five percent (5%) of the value of the Agreement.

## 26. MISCELLANEOUS

**A. Controlling Law.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Subrecipient consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

**B. Waiver.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**C. Successors and Assigns.** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Subrecipient, without the prior written consent of ODNR. Any assignment or delegation not consented to may be deemed void by the State.

**D. Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

**E. Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

**F. Entire Agreement.** This Agreement, along with documents incorporated herein by reference, contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements with respect to the subject matter hereof, whether written or oral, between the parties.

**G. Execution.** This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.

**H. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**I. Electronic Signatures.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to Ohio Revised Code Chap. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**STATE OF OHIO DEPARTMENT OF  
NATURAL RESOURCES:**

By: \_\_\_\_\_  
Steven Gray, Assistant Director  
As Designee For:  
Mary Mertz, Director

Date: \_\_\_\_\_

**SUBRECIPIENT:**

By: \_\_\_\_\_  
Signed

Title: \_\_\_\_\_